



Policy proposal response

Cross-border placement of children and young
people into residential care in Scotland

Date of submission: January 2022



Introduction:

About The Promise Scotland

The Promise Scotland is the independent body established to drive the change demanded by the [Independent Care Review](#).

Over the course of three years, over five and a half thousand children, young people and adults, plus families and the paid and unpaid workforce, selflessly shared their stories as part of the review of Scotland's 'care system'. These stories were often the most intimate, sometimes painful and traumatic experiences of their lives. It was their stories and generosity that informed the conclusions of the [Independent Care Review](#), which told Scotland what must change.

In February 2020, their voices were heard, when the conclusions were accepted in full, as laid out in the [Independent Care Review's reports](#) - [the plan](#), [the rules](#), [follow the money](#) and [the money](#) and [the promise](#).

Included in [the promise](#) are the 80+ calls for action that are the foundation for Scotland to #KeepThePromise it made to its children and families. It presents a radical and transformative approach to achieve '*a country that cares, made up of services that work*' driven by the voices of children, young people, families, and the workforce.

[Plan 21-24](#) was published in March 2021. A careful sequencing of the [Independent Care Review](#) conclusions, it is the first of three plans that will conclude with the promise kept to children and families by 2030. It translates the [Independent Care Review's](#) conclusions into five priority areas of change. This was followed by the accompanying [Change Programme ONE](#), published in June 2021, capturing the work underway in each priority area of change.

The Promise Scotland engaged with hundreds of organisations across Scotland in the development of both [Plan 21-24](#) and [Change Programme ONE](#), and the work of change is underway. Once Scotland has kept its promise, by 2030 at the latest, The Promise Scotland will cease to exist.

Cross Border Residential Care Placements

Owing to time constraints, The Promise Scotland has opted to submit a statement in response to the consultation.

Whilst understanding the legal challenges of the current situation, The Promise Scotland is concerned at the development of these proposals. These specific proposals on cross border placements need to be considered in the context of more fundamental issues, namely the incorporation of the UNCRC and the implementation of [the promise](#)

Published in February 2020 to full cross-party support, [the promise](#) made clear that:

“Scotland must stop selling care placements to Local Authorities outside of Scotland. Whilst this review is focused on children in Scotland there must be acknowledgement that accepting children from outside Scotland is a breach of their fundamental human rights. It denies those children access to their family support networks and services. It also skews the landscape for Scotland so that there is a lack of strategic planning for children meaning that children can be put in inappropriate settings if demand has spiked.” ([the promise](#), p110)

The Promise Scotland recognises the needs of children in England and Wales and the court judgements that surround some of these cases demonstrate how profoundly these children need supportive, therapeutic places where they can be cared for.

Whilst Scotland must move to a position where these placements are no longer used, it would be wrong to bring them to an end abruptly. Doing so could result in tragedy for some children, ultimately making things worse.

However, these proposals raise several significant concerns that must be addressed:

Planning process

The proposals are presented as an interim solution. However, there is no detail about how the Scotland will move towards its commitment to [the promise](#) and the ending of these types of placement. Whilst the lack of provision in England and Wales is cited as the primary reason for an increase in DOLS, the structure of Residential and Secure Care in Scotland can provide incentives for providers to accept placements from England and Wales. [Plan 21-24](#) made clear that by 2024:

Scotland will have a national, strategic planning process in place that ensures that children who are cared for away from their family of origin 'belong to a loving home.'

The planning process will reflect the needs of Scotland's children and young people whilst operating with the expectation that more children will remain with their families. It will reflect the principles of the promise ensuring:

- Scotland's most vulnerable children are not profited from (page 111)
- Standards of care are consistent (page 111)
- End to the selling of care placements to Local Authorities outside Scotland (page 110)
- Acute and crisis services are phased out to promote early intervention and prevention (page 111)

Whilst these proposals relate to Residential Care there is a larger issue about the overall funding of away from home care provision, including Secure Care that can drive decisions and placements that do not reflect Scotland's pre-existing commitment to [the promise](#)

Engagement with England and Wales

In order to fully address these issues, The Promise Scotland would encourage The Scottish Government and COSLA to engage fully with The Independent Review of Children's Social Care that is taking place in England. Whilst the issue is not simply about lack of provision in England and is also underpinned by funding and planning processes in Scotland, it is critical that there is good cross border engagement on developing a rights' respecting process that leads to **ongoing and sustained reduction** in these placements.

Potential increase in placements

Whilst the use of the inherent jurisdiction of the Court of Session was unsatisfactory, it does provide a **limited** level scrutiny of these cases and was a hurdle that had to be jumped by

placing Local Authorities. The Promise Scotland is concerned that providing a simpler route to placement will mean the number of placements will increase. And ministers must be clear that increase in cross border placements is directly at odds with [the promise](#) and UNCRC.

At the very least, the numbers of DOLS orders converted to CSOs must be robustly tracked, not only to understand the extent, but so that there can be a complete picture of why these children are placed in Scotland, to enable and inform work to prevent them happening.

Competing Legal Orders

The proposal states that the placing Local Authority will retain responsibility for the child and the High Court will retain oversight. However, there are outstanding questions about what happens in the event of placement breakdown, absconding and the child or young person requiring health support and treatment. If a child placed in Scotland from England commits an offence in Scotland, the Children's Hearing System and/or Sheriff Court will have jurisdiction which could lead to confusion over which order should take effect.

Information flow from the placing Local Authority will help, but Scottish Local Authorities will still be under a duty to undertake assessments as to need and risk in care and protection and/or justice situations that will arise whilst a child is resident in Scotland.

Care Leaver Duties

Whilst the proposals make clear that the placing Local Authority will retain responsibility there is little detail about the boundaries and application of that expectation. Specifically, there are questions about whether, in the event of a young person remaining in Scotland, the legislative framework of rights and entitlements for 'looked after' children will apply.

Conclusion

The questions and issues above must be addressed but, more profoundly, these proposals must be accompanied with a commitment to a much wider plan about how Scotland provides 'away from home' care and its interactions with placing Local Authorities outside of Scotland.

Whilst this proposal relates to Residential Care, The Promise Scotland is deeply concerned about the numbers of children in Secure Care who are from outside of Scotland and the knock on impact of availability of places, and the continued use of Polmont YOI for 16 and 17 year olds.

At the heart of this, and as barriers to progress within the current proposals, there is a lack of strategic planning around:

- the funding and structure of provision of Secure and Residential Care;
- the removal of 16- and 17-year-olds from Polmont;
- the provision of specialist mental health provision in Scotland.